Valley Water

Public Trails on Valley Water Lands: Policy Criteria and Guidance

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Table of Contents (Placeholder)

1.0 Introduction
2.0 Existing Valley Water Policy Related to Trails
3.0 Trail Policy Criteria
4.0 Guidance to Meet the Trail Policy Criteria

Figure 1 – Valley Water/Partner Agency Trail Joint Use Agreement Approval Process Flow Chart

Attachment 1 – Trail Project Screening Requirements
Attachment 2– Joint Use Agreement Application Requirements
Attachment 3 – Sample Biological Resources Assessment Requirements

Appendix A – Valley Water Policy Pertaining to Trails

1.0 Introduction

The Santa Clara Valley Water District (Valley Water) holds approximately one-third of Santa Clara County's creek miles, nine of its reservoirs, and narrow bands of adjacent lands totaling about 12,000 acres, in fee title ownership. Valley Water's enabling legislation and existing policies provide for the use of these lands for trails and other recreation that does not unduly impact operations, and is compatible with its water supply, flood protection and environmental stewardship functions.

As of 2020, over 40 miles of trails are in use on Valley Water land. These trails are operated and maintained by entering into agreement with any city, special district or the County of Santa Clara, which has jurisdictional authority and financial capacity to do so.

In December 2018, members of Valley Water's Community Projects Review Unit, together with staff environmental planners, biologists, and operations and maintenance supervisors, convened a task force to develop criteria and guidance for agencies proposing trails on Valley Water lands. The goal of this effort is to provide a clear Joint Use Agreement process for trail projects on Valley Water lands, including objective requirements that must be met to maintain Valley Water's operational and environmental stewardship functions.

The Trail Policy Criteria (Criteria) clarify that partner agencies are responsible for leading all aspects of trails from start to finish: from planning, public, stakeholder, and community outreach; through the design and environmental review process; and finally, operations, maintenance, and patrol of the trail. The Criteria also set objective requirements for trail projects to ensure that Valley Water's flood protection, water quality, channel stability, habitat protection, and operational needs are met.

These requirements are then explained in detail in the Guidance to Meet Trail Policy Criteria (Guidance), which compiles information from existing Valley Water administrative policy (such as Water Resources Protection Manual and the Guidelines and Standards for Land Use Near Streams); provides additional detailed requirements for biological resources protection and environmental review; and clarifies the steps in the Joint Use Agreement and Water Resources Protection Ordinance encroachment permit process.

Together, the Trail Policy Criteria and Guidance are intended to provide a roadmap for a collaborative process between Valley Water and agencies proposing a trail on Valley Water lands. This collaborative process begins with thorough planning and outreach led by the agency proposing the project, and continues in an iterative fashion through design and environmental review pursuant to CEQA, for which Valley Water acts as a Responsible Agency. Valley Water works as an active partner to support partner agencies through the trail planning and implementation process and works with partner agencies to pursue collaborative opportunities where mutual goals can be met.

The Criteria and Guidance will allow issues to be identified and addressed early, and/or incompatible projects be modified or, where agreement cannot be reached, eliminated, during the project scoping or very early planning phase. Valley Water hopes that this clear and objective process will result in trails that support healthy communities, engage residents to promote water resources stewardship, and protect water resources and streamside ecosystems in Santa Clara County.

Valley Water supports the completion of a comprehensive regional trails network throughout Santa Clara County, as envisioned in Santa Clara County's Countywide Trails Master Plan, and trail project proposals will be carefully considered under the Trail Policy and Guidance in relation to regional goals. Regional trail development occurs within a constrained landscape (areas of dense development where minimal siting flexibility exists) and Valley Water strives to collaborate with partner agencies to resolve issues identified through the application process and find mutually agreeable project outcomes that meet regional trail goals to the greatest extent feasible. The application process will consider the likelihood of suitable safe alternatives that meet regional trail goals, while balancing overall ecological protection and functionality of water resources, and flexibility may be warranted on a case-by-case basis for certain requirements of the Trail Policy Criteria and Guidance.
The Trail Policy Criteria and Guidance shall also be used to guide development of trail projects which are seeking funding through Valley Water's Safe Clean Water and Natural Flood Protection Grants and Partnerships Program. More information about this program can be found at https://www.valleywater.org/grants

2.0 Existing Valley Water Policy Related to Trails

District Act
The Santa Clara Valley Water District was created by an act (Act) of the California Legislature, and operates as a state of California Special District, with jurisdiction throughout Santa Clara County. The Act has been amended several times since its initial passage. The complete updated text of the Act provides for the powers and purposes of Valley Water, including to enhance, protect, and restore streams, riparian corridors, and natural resources in connection with carrying out the purposes set forth in this section; and to preserve open space in Santa Clara County and support the county park system. Section 5, Chapter 14, grants Valley Water the power "To acquire, construct, maintain, operate, and install landscaping or recreational facilities in connection with any dam, reservoir, or other works owned or controlled by the district". This power is exercised according to Board Resolutions described below and included as Appendix A.

Board Resolution 72-44 Recreation Uses of Groundwater Recharge Facilities (1972)
This resolution established policy that provides for public recreational use of groundwater recharge facilities and adjacent lands that is compatible with the recharge function of the facility, that said facilities shall be operated and maintained to permit

such joint use whenever feasible; that the provision, maintenance, and use of shall be the responsibility of an appropriate public agency by contract, whenever feasible.

Board Resolution 74-38 Joint Public Use of District Facilities (1974)
This resolution states that it is in the public interest to secure diversified uses of District property to the greatest extent compatible with the primary purpose of such property; that such use shall not unduly interfere with the District's use; that the partner agency will assume full responsibility for maintenance and policing of the use and full responsibility for liability; will take full responsibility for the installation, maintenance and removal of improvements convenient for the joint use; and will solicit public comment and opinion of adjacent property owners and of the affected community.

Board Resolution 82-30 Joint Use of Lands Acquired for Upper and Lower Llagas Creek PL 566 Watershed Projects(1982)
On May 25, 1982, the Board adopted Resolution 82-30 (Appendix A), declaring a policy to govern joint use of lands acquired for Upper and Lower Llagas Creek PL-566 (PL-566) Watershed projects. The policy states that the District shall neither make nor permit any use whatever for public access for park, trails, or recreation or similar purposes of lands presently owned or acquired by it for the Upper and Lower Creek Watershed projects while adjacent lands are within the areas designated Resource Conservation Areas in the land use plan of the General Plan of the County of Santa Clara.

The County land use, "Resource Conservation Areas", is an umbrella designation that includes agricultural, open space, baylands, hillsides, park, and ranch lands. These land uses occur largely along Llagas Creek from the Pajaro River to Lake Silveira and its tributaries (reaches 1 through 4 of the PL-566 project) and do not include lands in the urban areas of Gilroy and Morgan Hill. As trail projects are proposed within PL-566 project area and planning and environmental review are completed by the local public agencies, waivers of Resolution 82-30 may be approved by Valley Water on a case-by case basis.

Joint Resolution of the Board of Supervisors of the County of Santa Clara and the Board of Directors of the Santa Clara Valley Water District.

In 2018, Valley Water and the County of Santa Clara adopted a resolution approving shared principles as a framework for the land use relationship between the parties. The Resolution emphasizes existing policy intersections between the two agencies, including those sections of the District Act (see above) which grant Valley Water the power to preserve open space and support the County Parks system, and to acquire, construct, maintain, operate, and install recreational facilities in connection with any dam, reservoir, or other works owned or controlled by Valley Water. The full text of the resolution is provided in Appendix A.

Board Governance Ends Policies

The Valley Water Board of Directors directs its appointed officers to accomplish a set of Ends related to Water Supply, Natural Flood Protection, and Water Resources Stewardship (which are being updated at the time of this writing). The Draft Ends Policy E-4, Water Resources Stewardship, includes the objective to provide appropriate public access to Valley Water's streamside and watershed lands, as part of the overall Goal 5: Engage the community to promote watershed stewardship. This Trail Policy Criteria and Guidance provide evaluative standards that define appropriate public access, and instructions for how proposed trail projects can meet the standards.

3.0 Trails Policy Criteria

Valley Water permits the use of its lands for appropriate public access trails (Trail Projects) that are constructed, operated, and maintained by other public agencies and jurisdictions (Partner Agencies) through Joint Use Agreements with Valley Water. The Trails Policy Criteria (Criteria) are evaluative standards that inform the Valley Water Board of Director's decision-making process for evaluating a Joint Use Agreement for a Trail Project. The Criteria ensure that Trail Projects support healthy communities, while maintaining operation of Valley Water facilities for water supply and flood control, sustaining water quality to meet regulatory standards, and meeting environmental objectives. There are eight Criteria, each corresponding to an area of particular concern for Valley Water. The Criteria are listed below, and are defined in the following Guidance section.

1. **Planning and Public Outreach.** The Partner Agency with authority over the use, management, and policing of the Trail Project shall have completed a public planning and community outreach process prior to Valley Water's consideration of a Joint Use Agreement.
2. **Flood Protection.** Trail Projects, at a minimum, must not reduce existing or design levels of flood protection provided by a Valley Water facility both from operation and maintenance perspectives, adversely affect existing FEMA flood mapping, increase the extent of flooding or increase the frequency of flooding. Trail Projects must be compatible with planned Valley Water capital projects.
3. **Water Quality.** Trail Projects will be designed to minimize erosion and the flow of pollutants, including trash and litter, into aquatic environments. Pervious trail surfaces are preferred.
4. **Channel Stability.** Trail Projects, including any in-channel project components, must not adversely affect channel stability or cause or exacerbate existing erosion problems.
5. **Habitat Protection.** Construction and use of Trail Projects must not result in serious or major disturbance to biological resources, including aquatic, riparian, and wetland habitat, and the streamside ecosystem.
6. **Maintenance and Security.** Maintenance, policing, and management of the Trail Project is at the sole cost and responsibility of the Partner Agency. Removal or alteration of trail infrastructure for any reason, shall be at the cost of the Partner Agency.
7. **Valley Water Access.** The Trail Project must not limit or constrain Valley Water access to maintain and operate its facilities.
8. **Regulatory Compliance.** The Partner Agency is responsible for completing environmental review pursuant to the California Environmental Quality Act and obtaining all necessary regulatory permits prior to trail construction and use.

4.0 Guidance to Meet the Trail Policy Criteria

The following Guidance is intended to aid Partner Agencies in planning, siting, and designing a trail that will meet the Criteria. The Guidance, in part, compiles and interprets relevant sections of Valley Water's Water Resources Protection Ordinance (https://www.valleywater.org/contractors/doing-businesses-with-the-district/permits-working-valley-water-land-or-easement/water-resources-protection-manual), and the Santa Clara County Uniform Interjurisdictional Trail Guidelines (https://parks.sccgov.org/sites/g/files/exjcpb961/files/documents/Interjursidictional-Trails-Guidelines-text-and-graphics.pdf) and provides additional process requirements for Joint Use Agreements (JUAs) for Trails Projects. While flexible, the Guidance is written to minimize subjectivity and therefore aids both the Partner Agency and Valley Water staff in developing the JUA. The Guidance is intended to directly further the goal of implementing Trails Projects that support healthy communities, engage residents to promote water resources stewardship, and protect water resources and streamside ecosystems in Santa Clara County. The Guidance are primarily focused on Trails Projects located in the urban environment of the Santa Clara Valley floor, and implementation within upper watershed or hillside areas shall in general be guided by a common-sense standard (e.g., hydraulic analysis and bridge freeboard requirements will be considered as needed based on site-specific conditions for Trails Projects in upper watershed/hillside areas).

Process

The typical JUA process for a Trail Project is shown in **Figure 1.** Valley Water offers a two-step process for reviewing Trail Projects. The first step provides a Partner Agency with the opportunity to screen potential Trail Projects prior to investing significant resources to conduct the studies required to submit JUA and encroachment permit applications. Trail Project Screening is appropriate for the review of long-range trail planning projects that may include trail feasibility studies and master plans and/or incorporation of trails in general plans and specific plans.

Step 1 – Trail Project Screening

The Partner Agency shall submit conceptual designs and information describing how the Trail Project meets the requirements for review by Valley Water staff (Attachment 1 – Trail Project Screening Requirements). If the materials are complete Valley Water's Community Project Review Unit will conduct a site visit with Partner Agency staff to fully understand the proposed Trail Project and identify issues to be addressed in future studies. The screening process/site visit will culminate in response letter to the Partner Agency. This letter will provide an assessment of the feasibility to develop the Trail Project as proposed on Valley Water lands, and/or recommend alternative alignments or design features to improve feasibility (if possible). The Trail Project screening phase may therefore be an iterative process.

Step 2 – Joint Use Agreement Application

The Partner Agency formally initiates the JUA Application process by submitting the materials identified in Attachment 2 – Joint Use Agreement Application Requirements.

Trail Project Joint Use Agreement and Permit Process

STEP 1 PRE-APPLICATION SCREENING

- Review Trail Policy Criteria and Guidance
- Request Valley Water data
- Conduct preliminary feasibility analysis per Criteria and Guidance
- Complete conceptual site plan and response to screening questions (Attachment 1)
- Submit to Valley Water and schedule site visit

Trail Project Feasible?

NO? Re-align trail or modify design to meet screening requirements

YES?

STEP 2 APPLICATION SUBMITTAL

- Design development (15%) drawing set*
- Preliminary Hydraulic analysis
- Biological Resources Assessment
- Trail Maintenance Plan
- Detailed schedule for public outreach and approval process

Application Complete?

NO? Re-submit missing, incomplete, or non-conforming items

YES?

VW staff provides feedback and identifies need for additional analysis

Trail Partner Submits 35% plans*, prepares CEQA documentation, public outreach process begins or continues

VW staff provides feedback and identifies the need for additional analysis

Trail Partner Provides 65% plans*, Adopts CEQA, continues public outreach and applies for applicable regulatory agency permits

VW staff provides feedback and prepares first draft of JUA for Partner Agency review

Trail Partner provides 95%* plans, JUA feedback, Lead Agency Adopted CEQA documentation and copies of regulatory permits

VW staff provides feedback on plans, addresses Partner Agency comments on JUA, prepares Responsible Agency CEQA documentation

Partner Agency governing body approves JUA

VW Board approves JUA

Partner Agency submits signed/stamped 100% plans to VW for VW Water Resources Protection Ordinance permit issuance

VW issues Water Resources Protection Ordinance permit for trail construction

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*Engineered plans for Trails Projects located in Upper Watershed/Hillside areas shall be at a level sufficient to determine impacts to Valley Water flood protection, water supply, and environmental stewardship objectives. See Attachment 2, Joint Use Agreement Application Requirements

Following JUA application submittal, Valley Water's Community Projects Review Unit will review the application materials. If the application is incomplete or includes non-conforming items, the Partner Agency will be informed and requested to address and resubmit these items, if feasible.

4.1 Public Outreach by the Partner Agency

The Partner Agency shall conduct a thorough public process for the Trail Project which includes meaningful opportunities for public and stakeholder input at phases of trail planning. Trail Projects which are included in regional, general, or countywide master plans must also be subject to a specific planning process which includes public and stakeholder outreach. Stakeholders can include adjacent property owners, resource and regulatory agencies with jurisdiction over the Trail Project, in addition to trail user groups and non-governmental organizations. Outreach for the Trail Project shall be inclusive, with equitable opportunities for all members of the community to participate. Valley Water is committed to providing equal access to its lands regardless of racial or economic characteristics of the trail user community. When necessary, targeted outreach shall be conducted to neighboring landowners.

Valley Water supports the Partner Agency's planning and public outreach process through review of preliminary design products and attending and/or participating in public and stakeholder meetings. To facilitate this, the Partner Agency shall inform Valley Water of any public meetings a minimum of five (5) business days in advance of the public meeting. Materials, displays, and presentations included in the meeting shall be provided for review at that time.

Documentation of the public outreach process shall be provided by the Partner Agency when submitting a Trail Project for consideration by Community Projects Review Unit. Documentation shall include a record of public, community, stakeholder, and other meetings, as well as written or online outreach efforts.

4.2 Flood Protection

Trail Projects must not reduce the size of the active channel and floodplain conveyance area or re-direct channel flow to the detriment of channel stability. If trail development is proposed within the channel or active floodplain, a hydraulic analysis must be conducted to confirm that no increase in erosive velocity or flood elevations will result. The hydraulic analysis shall be prepared using HEC-RAS modeling format and include a scour analysis of the channel and active floodplain. Smaller streams in upper watershed areas may be exempt from this requirement. A geomorphic assessment may also be required if there is a possibility the project may increase channel instability. Additionally, in some cases sediment transport modeling may be necessary to determine if the project will alter routine sediment removal needs. Definitions and additional detail may be found in the Water Resources Protection Manual

(https://www.valleywater.org/contractors/doing-businesses-with-the-district/permits-working-valley-water-land-or-easement/water-resources-protection-manual).

Creek Crossings
In general, pedestrian/bicycle bridges must be located a minimum of two feet above the 100-year flood elevation, or two feet above the Flood Hazard Flood Insurance Rate Map flood elevation (located at https://msc.fema.gov/portal/home) and be constructed as clear span structures. If the length of the span makes clear span infeasible, the following requirements apply:

- Footings and pile caps are designed based on channel scour to prevent erosion;
- Foundation depth is a minimum of three (3) feet below the active channel invert; and
- Piers or pier walls are located outside the low flow channel and do not impair access to the channel for maintenance.

In general, clearance under pedestrian/bicycle bridges must be a minimum of 14 feet from the bridge soffit to the channel invert in settings where equipment must have access to the creek bed, or alternative maintenance access shall be provided Valley Water staff will determine if and where creek bed access is required for operations and maintenance. Culvert crossings are strongly discouraged. In cases where a bridge is infeasible, culvert design must include consultation with the Regional Water Quality Control Board, and must not impede flows.

Boardwalks
Boardwalks must not overhang or encroach beyond or within the top of bank (otherwise requirements for bridges shall apply).

Vegetation Planting/Landscaping
Revegetation or landscaping associated with the Trail Project shall consist of appropriate native plants that do not impact flow conveyance of, or maintenance access to, the channel. Additionally, plantings must not reduce or limit Valley Water's ability to provide future mitigation for its own purposes on Valley Water lands (also see **Habitat Protection**). Planting plans identifying location, number, and species shall be included in design plans for review during the JUA process.

4.3 Water Quality

The Trail Project shall include stormwater runoff reduction measures to prevent the flow of pollutants including sediment, litter, pet waste, pesticides, and chemical spills, into the creek or waterbody. Sheet flows along the trail surface toward the creek and associated concentration of flows over the creek bank shall be avoided through design, including proper slopes, angles, and surface materials. The use of pervious pavement is encouraged. Pervious pavement is a load-bearing, durable surface constructed over a subbase/base structure typically consisting of compacted, open-graded aggregate.

This layer or layers temporarily stores water prior to infiltration or drainage to a controlled outlet. Pervious pavement must be cleaned regularly to maintain its infiltration capacity (see **Maintenance)**. Pervious pavement shall not be utilized for Trail Projects located on levees or some other engineered banks.

Stormwater treatment shall be incorporated into the Trail Project according to the applicable Municipal Regional Permit Provision C.3. If required by this provision, treatment methods include bioretention areas, infiltration trenches, extended detention basins, vegetated swales, or, at a minimum, vegetated buffer strips. Piped subsurface drainage, drain dips, or swales must discharge to a lower elevation bioswale or appropriate C.3 feature, or an existing/new outfall. And, in combination with other runoff reduction measures, pervious pavement may be used to meet Provision C.3

Best Management Practices and other measures to reduce trail impacts to water quality, which may include providing and maintaining trash receptacles, installing signage to reduce litter and pet waste, to reduce pollution shall be included in construction plans and/or specifications for the Trail Project. If the Trail Project will result in one acre or more of soil disturbance, a Construction General Permit through the San Francisco Bay Regional Water Quality Control Board may be required. For smaller projects, pollution prevention BMPs are available here: https://scvurppp.org/pdfs/1415/SCVURPPP_Countywide_Program_BMP_Plan_Sheet_041615.pdf

4.4 Channel Stability

Chapter 1 of Valley Water's Water Resources Protection Manual, available at https://www.valleywater.org/sites/default/files/WRPM%20Ch%201.pdf, provides detailing information regarding channel stability requirements. General guidelines to aid Partner Agencies in designing Trail Projects that avoid impacts to channel stability are provided below.

Trails and engineered trail structures must not adversely affect channel stability due to erosive streamflow or runoff or sediment aggradation (also see **Water Quality)**. Trail Projects must submit a hydraulic analysis using HEC-RAS modeling format (see Flood Protection).

Trail Projects must avoid exacerbating existing erosion problems. Alternately, Trail Projects may repair the existing problems or provide funding for Valley Water long-term maintenance actions. Valley Water is under no obligation to repair streambank erosion or make other repairs solely to maintain trail function or use; however, repair of streambank erosion unrelated to trails is within Valley Water's general responsibility. If a Partner Agency wishes to repair streambank erosion or other repairs solely to maintain trail function or use, Valley Water will coordinate with Partner Agency and will not unreasonably deny request. If streambank repair is deemed beneficial to both Valley

Water and Partner Agency, both parties may join in partnership to complete the necessary repairs.

If trails are proposed along natural channels with unstable banks or recurring erosion damage, the trail project shall include appropriate bank stabilization measures such as earth repair with compacted soil, buried rock buttress, live construction, contour wattling or planting, or other bioengineering techniques. Design of the bank stabilization measures shall occur in close coordination with Valley Water staff, maintain or improve conveyance capacity of the channel, and shall not increase long-term maintenance needs for the project reach. Detailed design guidance is available in the Water Resources Protection Manual (https://www.valleywater.org/contractors/doing-businesses-with-the-district/permits-working-valley-water-land-or-easement/water-resources-protection-manual).

As an alternative to including bank stabilization measures in the project, the applicant may choose to enter into a long-term maintenance agreement with Valley Water as part of the terms of the JUA. The long-term maintenance agreement would include funding by the Partner Agency to ensure that other required maintenance activities are not affected by the additional, trail-related maintenance.

4.5 Habitat Protection

Riparian habitats are found along the stream courses in Santa Clara County. These creekside plant communities provide refuge and forage for many animals and support threatened and endangered species. Throughout the San Francisco Bay Area, riparian habitat has been lost and degraded for a variety of reasons including urbanization of watersheds, channelization of streams and introduction of exotic species. Climate change may further degrade the riparian habitats. More than 225 species of birds, mammals, reptiles, and amphibians depend on California's riparian habitats.

Construction and use of Trail Projects must minimize or avoid disturbance to biological resources, including riparian habitat. Potential direct and indirect impacts to biological resources from the construction and use of the proposed Trail Project must be carefully analyzed by a qualified biologist and included with the Joint Use Agreement Application (Attachment 2 – Joint Use Agreement Application Requirements and Attachment 3 - Sample Biological Resources Assessment Table of Contents). The Biological Resources Assessment shall, at a minimum, clearly identify the natural vegetation communities, special-status species, wildlife corridors, sensitive or anticipated jurisdictional lands (such as wetlands and riparian habitat), existing Valley Water Mitigation Areas, and Santa Clara Valley Habitat Plan Land Cover Types, if applicable, potentially impacted by the Trail Project. The assessment shall identify potential impacts

from construction and use of the Trail Project on these resources and recommend appropriate measures to avoid or minimize potential impacts[1].

Valley Water will determine whether the proposed Trail Project meets the Habitat Protection criteria on a case-by-case basis according to, but not limited to, the guidelines detailed below.

If impacts to biological resources cannot be avoided through project design, suitable habitat or other enhancements to offset unavoidable impacts should be developed and described in the Biological Resources Assessment. Such enhancements must be included as part of the project and may be in addition to mitigation requirements through regulatory (non-Valley Water) permit processes.

The guidelines below are intended to assist Partner Agencies to design Trail Projects that meet Valley Water's Habitat Protection criteria.

Sensitive Trail Siting and Design.
New construction of trails or trail segments within wetlands or parallel to waterways within riparian habitat shall be avoided, and an appropriate buffer provided where feasible. Access areas to the waterway or riparian habitat for interpretive/educational purposes, aligned and designed to minimize impacts to habitat, are encouraged. Trail Projects shall be located along existing access roads or within other previously-disturbed areas to the greatest extent feasible. For Trail Projects proposed within undisturbed habitat in upper watershed/hillside areas, including lands surrounding Valley Water reservoirs, the Biological Site Assessment shall inform the application of this guidance (e.g., avoidance of riparian, wetland, or rare plant populations). For Trail Projects located in urban creek-side locations that impact sensitive habitats, the Biological Site Assessment shall include consideration of safe alternatives balanced with broad ecological objectives, potentially including agreements with neighboring landowners that would avoid disturbance of such areas. Trails shall be generally limited to one side of the waterway unless, for example, short trail segments on both sides of the waterway are essential for meeting regional trail connectivity goals and can be sustainably implemented. Crossings shall be avoided to the maximum extent feasible to minimize shading impacts on the streams. Bridges proposed as part of a Trail Project should typically be situated perpendicular to streamflow. These guidelines reflect requirements of natural resource regulatory agencies and are intended to streamline the regulatory permitting process.

Protection of Native Vegetation.

[1] The Biological Resources Assessment will form the basis for Valley Water's analysis of the feasibility of the proposed Trail Project related to the Habitat Protection criteria, and should also form the basis for the Trail Partner's environmental review pursuant to CEQA and subsequent regulatory permitting. However, it should be noted that Valley Water's requirements for Habitat Protection are not intended to be precisely aligned with established thresholds which determine the level of significance of, and required mitigation for, impacts to Biological Resources under CEQA or other state and federal regulations. The **Regulatory Compliance** section provides information about Valley Water's role as CEQA Responsible Agency.

Trail Projects shall avoid removal or substantial pruning of native trees, and seek an alignment that maintains a contiguous tree canopy. If tree removal is required, the trail shall be aligned such that young/small, unhealthy, non-native, or trees unlikely to reach maturity due to site conditions (e.g., located beneath power lines, growing in confined areas, shaded out by larger trees, etc.), are targeted for removal.

Protective Design Features.
Measures to minimize habitat degradation from trail use include: the use of natural barriers or other design elements such as signage, short fencing, native plantings and bollards to discourage off-trail use, designated access points or viewing areas designed to focus access in less sensitive areas, abandoning and restoring unauthorized access areas, installing interpretive and regulatory signage, and regular patrol.

Minimize Grading and Excavation
Grading and excavation for the trail project shall be minimized, with unpaved trails designed to follow natural land contours to the extent feasible and avoid disruption of natural drainage patterns (avoiding concentration of runoff over the creek bank).Paved trails should be graded to drain away from the creek to avoid erosion and rills on the creek bank which commonly occur when the top of bank is paved. Excavation for trail projects must avoid disturbing the root systems of mature native trees. This is generally defined by the dripline, or outer circumference of the canopy. If grading or excavation must occur beneath the dripline of native trees, a certified arborist must be consulted to determine appropriate tree protection measures or alternate setbacks. Additional BMPs may be required when working adjacent to the channel to ensure water quality is not impacted due to excavation and grading.

Wildlife-Friendly Lighting
Except as required by law, or to provide for visitor safety at trail undercrossings or other engineered structures or other key locations, lighting is prohibited. If lighting is required, it shall be outside riparian habitat and of a wildlife-friendly design (shaded/shielded, directed down, motion-sensored, lighting color/wavelength, timers to control lighting use).

Native Planting
Revegetation or landscaping associated with the Trail Project shall consist of appropriate native plants that do not impact flow conveyance of, or maintenance access to, the channel. Additionally, plantings must not reduce or limit Valley Water's ability to provide future mitigation for its own purposes on Valley Water lands (also see **Habitat Protection**). Planting plans identifying location, number, and species shall be included in design plans for review during the JUA process.

Trail Undercrossings
New trail undercrossings of roads and highways, where maintenance roads do not exist, should be located above the 10-year flood return interval unless no other feasible alternative exists.

Habitat Enhancement
Habitat enhancement may be incorporated into the design of the Trail Projects to offset adverse effects and create an overall beneficial impact on habitat quality. Such enhancements may include geomorphological restoration (improving the channel bed and banks of the creek to restore historic channel or floodplain connectivity), removal of existing barriers to aquatic habitat connectivity, and relocating or reconstructing existing trails or other developed areas to correct environmental damage, restore natural drainage patterns, and/or improve stormwater infiltration and treatment.

4.6 Maintenance and Security

Trail maintenance plans are required as part of the Joint Use Agreement and shall include, at a minimum, the following items:

a. Annual trail brushing (trimming vegetation back to maintain designed trail width and vertical clearance) and trail-associated invasive species control, and vacuuming of pervious pavement and other drainage system maintenance as applicable, as-needed hazardous tree removal, tread/trail surface repair, maintenance and monitoring of plantings, and trash and graffiti removal.
b. A schedule of maintenance inspections.
c. A detailed action plan and parties responsible for trail closure required for Valley Water maintenance actions and during winter storms resulting in high creek flows flooding trail underpasses. The trail closure plan must include bicyclist and pedestrian detour routes that can be utilized during closures. The Partner Agency shall be responsible for the implementation of the trail detour and shall be the primary contact for trail users during a Valley Water maintenance closure of the trail. Valley Water staff will provide contact information for questions relating to the project and timeline as needed and will work with the Partner Agency to provide project information to trail users. Signage shall be provided in advance of the trail closure, with users instructed to address questions or comments to the Partner Agency. Whenever possible, Valley Water will provide a minimum of one-week minimum advanced notice of routine or planned maintenance. Extant agreements with Partner Agencies, such as County of Santa Clara, shall be precedent in this regard.
d. Trail security is the responsibility of the Partner Agency.
e. An annual budget for addressing routine, annual, adaptive management actions and unanticipated trail maintenance needs, with a funding source identified. It is recommended that the Partner Agency secure associated permits to undertake these activities while seeking construction permits.

Trail maintenance plans shall be reviewed and considered with the JUA application.

4.7 Valley Water Access

Trail Projects, including all above-grade engineered structures and signage, must be sited and designed to provide a clear path of travel for Valley Water maintenance, operations, and emergency vehicles. Trail closures during Valley Water maintenance activities are mandatory and the responsibility of the Partner Agency, with appropriate notification and support for signage and information needs from Valley Water, as described further above. Fencing or other safety and security features, if required to protect trail users, Valley Water assets or adjacent public or private property, must typically be located at or outside of the Valley Water property boundary unless otherwise acceptable to Valley Water and such features allow necessary access, maintenance and operations. See also *Stream Channels*, section e., on following page.

Valley Water lands are required to construct and maintain flood protection and water supply infrastructure. Therefore, Trail Projects on Valley Water lands have the potential to impact levees, concrete channels, engineered channels (non-concrete lined), natural channels, flood walls, and water utility facilities such as dams, reservoirs, water diversion infrastructure, pipelines and percolation ponds. Trail Projects must identify and avoid impacts to operation and maintenance of these facilities. Spatial location data for Valley Water facilities is available upon request (see **Screening Criteria**, below).

Information on typical maintenance activities and associated access requirements are provided below.

Stream channels. Channel maintenance activities generally include sediment removal, streambank protection/repair, clearing of trash and debris, vegetation management and invasive species control, and riparian planting. Required access standards for routine channel maintenance include:

a. Maintenance roads must be maintained at their existing width, generally 18 feet, but no narrower than 12 feet. Partner Agency shall secure additional lands as feasible to maintain adequate path of travel for Valley Water maintenance vehicles.
b. Landscaping or riparian habitat plantings associated with the Trail Project must not constrict the width of existing maintenance roads. Trimming or pruning of plantings may be required on a seasonal basis and is the responsibility of the Partner Agency (see **Maintenance)**.
c. Irrigation, if necessary, must be temporary and should typically be above ground, to be removed following the plant establishment period.
d. Utilities necessary for the Trail Project shall not be located on Valley Water property except for necessary storm drainage features as described in Section 4.3 above.
e. Fencing between the trail and the channel is not permitted, except in special circumstances of particular safety concern. Fencing shall be constructed to facilitate easy removal or minimization (fold-down railing) by the Partner Agency (such using removable bollards or posts). Such removal shall occur within 10 business days of receiving written request from Valley Water.
f. All trail furniture, amenities, and signage must maintain a clear path of travel for maintenance vehicles. Trail furniture and other features that attract

concentrated use shall be located away from maintenance roads and if proposed at maintenance access points shall be sited so as to accommodate maintenance needs.

Levees and flood walls. In addition to the above, required access standards for trails on levees include:
a. Army Corps of Engineers (ACOE) levee standards and FEMA National Flood Insurance Program (NFIP) standards must be met for any construction on levees. Additional ACOE requirements or restriction may apply if the levee was constructed by the ACOE and subject to Section 408 approval. No plantings are allowed on levees aside from herbaceous plantings that can be mowed and maintained to allow visual inspection of the levee. No irrigation, even temporary, shall be allowed on levees.
b. No fencing shall be allowed on levees aside from at trail entrances or at channel crossings. Proposed access ramps should not result in a decrease to the levee section.

Reservoirs and Percolation Ponds. In addition to the above, required access standards for trails along reservoirs and percolation ponds include: Trails along Water Utility facilities, such as reservoirs, dams and percolation ponds, must be located in a manner which does not impede the function of or access to the facility or any appurtenances or impair maintenance of the facility. In the case of reservoirs, Division of Safety of Dams (DSOD) and/or State Water Resources Control Board (SWRCB) requirements may apply if the Trail Project may impact the dam or function of the dam or water quality of source of supply reservoirs.

4.8 Regulatory Compliance

California Environmental Quality Act (CEQA)
Partner Agencies will conduct environmental review pursuant to CEQA for the proposed Trail Project and in nearly all cases will act as the CEQA Lead Agency. The appropriate CEQA document or exemption category must be identified in the Trail Screening Application. Valley Water will act as Responsible Agency and as such anticipates consultation during the scoping, administrative draft, and public review draft stages of development of the CEQA document. The purpose of the consultation is to ensure that the CEQA document that will be used later for Valley Water's CEQA compliance addresses its interests. Valley Water will review and provide written comment on draft CEQA documents. The Trail Project CEQA document must be approved by the Partner Agency before the Valley Water Board of Directors considers final approval of a JUA.

Regulatory Permitting
The Partner Agency is responsible for securing permits from all regulatory agencies prior to final approval of Valley Water's Water Resources Protection Ordinance Encroachment Permit for the Trail Project. The Partner Agency should consider long-term maintenance and adaptive management plans when seeking regulatory permits.

ATTACHMENT 1. TRAIL PROJECT SCREENING REQUIREMENTS

1. Vicinity map showing the location of the Trail Project relative to existing roads and trails

2. Conceptual site plan including the following information:
    - General contours
    - Boundaries of Valley Water lands and adjacent parcels, including all Valley Water and non-Valley Water easements and FEMA flood zones
    - Top of bank, centerline of the watercourse and dripline of the riparian canopy, if the Trail Project or a portion of it is proposed adjacent to a creek channel or within its active floodplain.
    - Proposed trail alignment, engineered structures (bridges, underpasses and ramps, overcrossings, etc.), trailheads, or other major improvements

3. Project Description. Provide a short description of the trail and engineered structures indicating width, shoulders, surfacing material and any other design objectives. Indicate whether the Trail Project is within an approved plan, and any project-specific planning or public outreach conducted and/or planned.

4. Valley Water Operations and Access. Describe how the project will maintain necessary access for Valley Water operations and maintenance activities. For Trail Projects located within or adjacent to a capital project planned by Valley Water, describe how the Trail Project proposes to integrate with, or avoid impacts to, the Valley Water capital project.

5. Water Quality and Habitat Protection. Describe grading and drainage improvements proposed to address stormwater flows from the trail surface. Indicate potential impacts to riparian or wetland habitat, mature native trees, or other sensitive or protected biological resources.

6. Trail Operations and Maintenance. Outline long-term maintenance and security considerations and describe the capacity of the jurisdiction to maintain, patrol, and manage the Trail Project in perpetuity. Include information about existing, similar maintenance programs and demonstrate the expertise and ability to address expected and unforeseen future maintenance and security issues. Describe any public safety or security measures included in the project.

7. Environmental Review and Permitting. Identify the anticipated level of CEQA environmental review and regulatory permits for the Trail Project.

8. Proposed Schedule.

ATTACHMENT 2. JOINT USE AGREEMENT APPLICATION REQUIREMENTS

1. Concept design drawings and site plan including:
   - ☐ A vicinity map showing the location of the Trail Project relative to existing roads and trails
   - ☐ Accurate contour lines showing topography at reasonable intervals on slopes greater than five percent
   - ☐ Boundaries of Valley Water and adjacent parcels, including all Valley Water and non-Valley Water easements
   - ☐ Top of bank and centerline of watercourses if the Trail Project or a portion of it is proposed adjacent to a creek channel or within its active floodplain.
   - ☐ Vegetation types, resource agency jurisdictional areas and boundaries (from Biological Resources Assessment)
   - ☐ Location, common name, diameter and number of trees to be removed or located near improvements, measured 4.5 feet above grade.
   - ☐ FEMA flood zones, water surface elevations, and flow rates
   - ☐ Proposed trail alignment and locations of bridges, trailheads, drainage features, or other major improvements
   - ☐ Location of all existing improvements and utilities
   - ☐ Existing drainage patterns and drainage patterns as a result of the Trail Project
   - ☐ Typical trail cross sections including surfacing materials
   - ☐ Conceptual pedestrian detour plans that can be utilized during trail closures

For trails in upper watersheds or hillside areas, plans should be at a level sufficient to understand the overall scope and impacts of the work being undertaken, which frequently does not require engineered drawings.

2. Hydraulic Analysis. If the Trail Project or a portion of it is proposed within a creek channel or its active floodplain attach hydraulic analysis showing no adverse impact to the channel's ability to convey flows. This requirement may be waived in upper reaches or small creeks.

3. Biological Resources Assessment that addresses any impacts to special status species, sensitive or jurisdictional habitats, mature native trees, and wildlife corridors (See Attachment 3 – Biological Resources Assessment Requirements).

4. Trail maintenance plan and commitment of financial resources to implement the plan.

5. Detailed schedule including public planning process, environmental review, and consideration for approval by the Partner Agency governing body.

ATTACHMENT 3. BIOLOGICAL RESOURCES ASSESSMENT REQUIREMENTS

Table of Contents

1. Project Description
2. Environmental Setting
3. Methodology and Biologist Qualifications
4. Vegetation and Wildlife Habitat in the Project Area
5. Wildlife Corridor Assessment
6. Jurisdictional and Valley Habitat Plan Fee Zones in the Project Area
7. Special Status Species Potentially Occurring in the Project Area
8. Potential Project Impacts
9. Feasible Alternatives to Avoid Impacts
10. Impact Avoidance and Minimization Measures
11. Compensatory Mitigation Requirements and Recommendations

Figures

Figure 1: Trees >3” DBH and above proposed for removal.
Figure 2: Aerial image of biological assessment area and surrounding land uses.
Figure 3: Aerial image of vegetative communities and developed areas within the Project area.
Figure 4: Riparian habitat within the Project area.
Figure 5: CNDDB occurrences within a 1-mile and 2-mile radius of the Project area.
Figure 6: Santa Clara Valley Habitat Plan fee zones, if applicable.

Tables

Table 1. Sensitive and Jurisdictional Areas Located in the Project Area
Table 2. Trees >3” DBH Proposed for Removal
Table 3. Special Status Species with Potential to Occur in the Project Area
Table 4: Avoidance and Minimization Measures

Appendix A

Board Resolutions

RESOLUTION NO. 72-44

STATING POLICY OF
SANTA CLARA COUNTY FLOOD CONTROL AND WATER DISTRICT
REGARDING RECREATION USES OF GROUNDWATER
RECHARGE FACILITIES

WHEREAS, groundwater recharge facilities, consisting of spreading basins or percolation ponds, have and will be constructed, operated and maintained by this District in order to supplement the natural recharge of the underground water basins of Santa Clara County; and

WHEREAS, such facilities provide an opportunity for water-oriented, public recreation; and

WHEREAS, a public recreation use of groundwater recharge facilities can only be compatible with the recharge function under certain restrictions upon such recreation use all as more fully set forth in "Statement Regarding Recreation Use of Groundwater Recharge Facilities" of June 1972 to which reference is hereby made; now, therefore, be it

RESOLVED, by the Board of Directors of Santa Clara County Flood Control and Water District that the following statement of policy regarding recreation use of this District's groundwater recharge facilities shall be and the same is hereby adopted:

1. Compatible public recreational use of the lands adjacent to, and of the water surface of, groundwater recharge facilities is favored.

2. Said facilities shall be so operated and maintained as to permit such joint use wherever feasible.

3. The provision of recreational structures, facilities and amenities and their maintenance for safety and sightliness, together with the control of the recreation use, shall be wherever possible the responsibility of an appropriate public agency by contract with this District.

4. The following recreational activities are incompatible with the water conservation objective of the facilities and will be prohibited:

a. Swimming and wading.

b. Motorboating.

c. The operation of motor vehicles or the presence of large animals within, on or immediately adjacent to the side slopes of a recharge basin.

5. District water supply revenues will not be used to meet the cost of such recreation uses as on-shore facilities, fish stocking and replacement, public liability insurance, policing and supervision.

PASSED AND ADOPTED by the Board of Directors of Santa Clara County Flood Control and Water District this 13th day of June 1972,

Resolution No. 72-44, STATING POLICY OF SANTA CLARA COUNTY FLOOD CONTROL AND WATER DISTRICT REGARDING RECREATION USES OF GROUND-WATER RECHARGE FACILITIES, by the following vote:

AYES: Directors J. CHIRI, V. F. CORSIGLIA, M. E. DULLEA, J. J. LENIHAN, R. T. SAPP, R. J. STURLA, F. A. WILCOX

NOES: Directors NONE

ABSENT: Directors NONE

SANTA CLARA COUNTY FLOOD CONTROL
AND WATER DISTRICT

By: Maurice E. Dullea
Chairman of the Board of Directors

ATTEST: VIOLET V. ENANDER

Violet V. Enander
Clerk of said Board of Directors

STATEMENT REGARDING RECREATION USE OF GROUNDWATER RECHARGE FACILITIES

June 1972

The Santa Clara County Flood Control and Water District has been asked to discuss the cost or policy matters relating to the use of groundwater recharge ponds for recreation. It is clear from our studies and those of others that some aspects of recreation and groundwater recharge conflict with each other. However, this does not mean that groundwater recharge ponds cannot be used for recreation. Groundwater recharge ponds can be used for recreation provided that appropriate coordinated efforts are made by the respective jurisdictions handling groundwater recharge and recreation, and further, that appropriate cost allocations are made between these two purposes.

For example, the recreation activity must accept full responsibility for the handling of people who would use the groundwater recharge facility, such as accepting liability responsibility, taking care of policing, and providing parking facilities. As in all recreation areas, there is the problem of trash and litter which requires continual attention. The use of groundwater recharge facilities for recreation provides greater opportunities for vandalism of the control works necessary to the basic function of groundwater recharge. Some recreation users plug outlets, change controls, block overflow weirs, and break valves and other

control mechanisms. The cost of preventing this type of vandalism together with the repair of such damages can be appropriately shared by the recharge and recreation agencies.

Wading or swimming in groundwater recharge ponds is not acceptable and must be prohibited. These types of activities break down the agglomerated particles and stir up the fine soil materials which settle to create a thin film of relatively impermeable material over the sides and bottoms of the ponds. This prevents infiltration of water and therefore reduces, by a considerable amount, the groundwater recharge capability. In addition, there is a public health problem which arises from the fact that the recharge water is not chlorinated and a concentrated use of the facility by swimmers creates an unsanitary condition which is not acceptable to the Public Health regulatory agencies.

The passive recreation uses such as aesthetic enjoyment, fishing, perhaps some forms of model boating or even sailing and rafting (which may not be exactly passive in themselves) can be considered compatible to some extent with groundwater recharge under appropriate regulations. It is clear that any recreation activity in and around the percolation ponds provides an opportunity for the disposal of trash and litter into the water system. This trash and litter has a tendency to seal off the sides and bottom of the ponds, reducing the total amount of groundwater recharge. In order to maintain the groundwater recharge capability

the ponds would have to be cleaned more often at an increased cost.

It may, in some locations, be possible to increase the number of percolation ponds so that the reduction in groundwater recharge caused by recreation activities is made up by the increased number of recharge facilities. However, it is clear that the cost of the increased number of recharge facilities required to make up the lost groundwater recharge capability should be assigned to the recreation users.

There are also operational problems which must be faced in a cooperative fashion by the recreation and water agencies. For example, it appears that a wet and dry cycling operation with the dry periods relatively frequent increases the total quantity of water recharged. It also reduces insect problems and algae and weed growth. It is also obvious that such a wet-dry operation would adversely affect any fish population and would cause complaints by the recreation users who desire to see the basins full of water at all times. It may be possible to operate the groundwater recharge facilities in a relatively continuous fashion; that is, keep them full until the groundwater recharge rates are reduced to the point of diminishing returns and then the ponds could be dried and cleaned in order to reestablish the recharge rates. Under this form of operation cleaning would normally be done about once or twice a year. During these cleaning operations the fish would have to be transferred into holding ponds in order

to maintain a fish population or the area restocked after cleaning. This can be done, but the cost of such handling and restocking are appropriately charged to the recreation users.

It is clear that a combined recreation-groundwater recharge facility would result in a less flexible operation from a water supply standpoint. The recreation user would be in large numbers and when recreation was adversely affected by some water supply operation you could expect considerable complaints. However, little or nothing is heard in the way of complaints over the lack of groundwater recharge. Recharge apparently is something that few people fully appreciate.

To make groundwater recharge facilities more acceptable for recreational use, it would be desirable if there were areas adjacent to the water suitable for parking, picnicking, and other recreation activities. Naturally, from a groundwater recharge standpoint, a minimum amount of adjacent land area is acceptable for operation and maintenance and, therefore, the area obtained for groundwater recharge is primarily the water surface. This adjacent land needed for recreational services can be obtained by the recreation agency either at the time of purchase of the recharge area or later if the area is undeveloped. In some cases it may be possible to add recharge facilities to existing park and recreation areas using some of the area already available if it is desirable to add a water body to the park.

From a groundwater recharge standpoint, a number of small ponds provide a greater ease and flexibility of operation as well as allowing them to fit in with the terrain. Therefore, small areas are more suitable for groundwater recharge, while larger water areas are more desirable from a recreation standpoint. It is also desirable to have groundwater recharge facilities that are easy to maintain and in the smaller facilities the rectangular units are preferable. However, the recreation users desire, from an aesthetic standpoint, curved ponds with projections and convolutions to improve the appearance of the water-land area. These types of aesthetic treatments are more adaptable to larger size ponds, considering maintenance problems, but the larger ponds have less flexibility of operation.

The deeper the groundwater recharge ponds are, the better they are for groundwater recharge; this parameter would appear to agree with the recreation uses of boating and fishing. The ponds should be shallower for wading or swimming but since these uses should be prohibited for other reasons then the depth of pond does not seem to be important from a recreation standpoint. However, deeper ponds do present a problem from a public safety standpoint.

The steeper the side slope of the recharge ponds the better it is for groundwater recharge while the flatter side slopes are more desirable from a public safety standpoint. If recharge facilities are to be used for recreation, then it would appear

desirable to add a benched trailway at or immediately above the water surface in the pond. This would provide a means for people who fall into the water to climb out of the ponds where otherwise they may not be able to climb the steep side slopes. This bench or trail adjacent to the water surface would also provide a safe means to meet the desire of people to get closer to the water. The cost of constructing a benched trailway on the side slopes of recharge ponds appears to be a recreation user cost.

It may be concluded, then, that in spite of the fact that recreation and groundwater recharge have some major areas of incompatibility, appropriate cooperation and allocations of cost between water and recreation agencies would permit groundwater recharge facilities to be used for recreation. This dual use requires a full recognition of the problems and appropriate cooperation between the responsible agencies. The recreation agencies should provide appropriate insurance protection, the necessary onshore facilities, fish stocking and replacement, and policing or supervision of the recreation activities at the groundwater recharge facilities. Swimming and wading would have to be prohibited, the use of motor boats on the water would be prohibited and the use of motor vehicles and horses, which cause erosion of the side slopes of the pond areas, would also be prohibited. The water agency would have to develop an appropriate operations program to provide maximization of the groundwater recharge while

at the same time considering the recreation needs, develop vandal proof operation devices and fence critical areas, and take appropriate measures to control insects and aquatic weeds as well as generally maintaining the groundwater recharge facility.

Lloyd C. Fowler
Director of Engineering
Santa Clara County Flood Control
and Water District
June 1972

RESOLUTION NO. 74-38

DECLARING POLICY GOVERNING JOINT PUBLIC USE OF DISTRICT FACILITIES

RESOLVED by the Board of Directors of Santa Clara Valley Water District that, it being deemed in the public interest to secure diversified uses of District property to the greatest extent compatible with the primary purpose of such property, it is hereby declared to be the policy of this Board that, upon conditions outlined below and others of like nature deemed necessary by this Board, the joint use of District facilities by properly empowered public agencies is favored.

A. Such joint use shall not unduly interfere with the District's use;

B. The agency which it is proposed shall make such joint use will assume full responsibility for maintenance and policing of the use and full responsibility for damage or claim of damage of every kind resulting from the use and will further provide adequate public liability insurance coverage;

C. The installation, maintenance and removal of improvements or structures necessary or convenient to the joint use shall be at the sole cost of the agency proposing such joint use; and

D. The agency proposing such joint use will secure the

Resolution Declaring Policy Governing Joint Public Use of District Facilities.

comment and opinion of the adjacent property owners and of the affected community by public hearing and make a report of such comment as part of its proposal; provided, that the requirement of a public hearing may in any appropriate case be waived by the District.

PASSED AND ADOPTED by the Board of Directors of Santa Clara Valley Water District, this 7th day of May, 1974, by the following vote:

AYES: Directors J. CHIRI, M. E. DULLEA, P. T. FERRARO, ~~J. J. LENIHAN, E. A. MIRASSOU~~, C. RUSH, R. T. SAPP.

NOES: Directors None

ABSENT: Directors J.J. Lenihan, E.A. Mirassou

SANTA CLARA VALLEY WATER DISTRICT

By: Joseph Chiri
Chairman of the Board of Directors

ATTEST: VIOLET V. ENANDER

Violet V. Enander
Clerk of said Board of Directors

RESOLUTION NO. 82- 30

DECLARING POLICY TO GOVERN JOINT USE OF
LANDS ACQUIRED FOR
UPPER AND LOWER LLAGAS CREEK
PL 566 WATERSHED PROJECTS

RESOLVED, by the Board of Directors of Santa Clara Valley Water District, that it shall be the policy of this District that it shall neither make nor permit any use whatever for public access for park, trail, recreation or similar purposes of lands presently owned or acquired by it for the Upper and Lower Llagas Creek PL 566 Watershed projects while adjacent lands are within the areas designated as "Resource Conservation Areas" in the land use plan of the General Plan of the County of Santa Clara.

PASSED AND ADOPTED by the Board of Directors of Santa Clara Valley Water District on May 25, 1982, by the following vote:

AYES: Directors M. E. DULLEA, P. T. FERRARO, A. H. FISHER, R. W. GROSS, ~~J. J. LENIHAN,~~ A. T. PFEIFFER, S. SANCHEZ

NOES: Directors None

ABSENT: Directors None

ABSTAINED: Director James J. Lenihan

SANTA CLARA VALLEY WATER DISTRICT

By: Arthur T. Pfeiffer
Chairman of the Board of Directors

ATTEST: SUSAN A. EKSTRAND

Susan A. Ekstrand
Clerk of the Board of Directors

05RL1680

File No.: 18-0645

Agenda Date: 8/14/2018
Item No.: 4.2.

BOARD AGENDA MEMORANDUM

SUBJECT:
Santa Clara Valley Water District Partnership Agreements with County of Santa Clara.

RECOMMENDATION:

A. Adopt a JOINT RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA AND THE BOARD OF DIRECTORS OF THE SANTA CLARA VALLEY WATER DISTRICT APPROVING SHARED PRINCIPLES AS A FRAMEWORK FOR THE LAND USE RELATIONSHIP BETWEEN THE PARTIES;
B. Approve a Memorandum of Agreement Regarding the Land Use Relationship with Santa Clara Valley Water District for a five-year term that may be extended for successive five-year terms with written approval by both parties;
C. Approve and authorize the Chief Executive Officer (CEO) to execute the Master License Agreement By and Between the Santa Clara Valley Water District and the County of Santa Clara for Mutual Access to County of Santa Clara Parkland and Santa Clara Valley Water District for a five-year period with three renewal terms of five years subject to the written approval of both parties; and
D. Approve the Master Partnership Agreement for Recreational Use of Certain District Lands, Reservoirs, and Recharge Ponds with the County of Santa Clara.

SUMMARY:

For over 60 years, the Santa Clara Valley Water District (District) and the County of Santa Clara (County) have worked together to effectively manage an integrated system of land and water that serves multiple purposes. By working together, we have protected water quality, provided for recreational use of the reservoirs and creeks, provided education on water conservation, enhanced natural resources, restored habitats, improved flood protection, and removed mercury from the environment.

Under an existing agreement with the District, County has the authority to make available for public recreation ten reservoirs and five ponds owned and operated by the District. Approximately 6,000 acres of District property is leased to the County for recreational purposes; half of the County's 28 parks incorporate or abut District property.

The County spends an estimated $3 million each year managing public use of District reservoirs and riparian corridors. Through this partnership, the agencies support public launch of approximately 23,000 boats annually. The County conservatively estimates that approximately 66,000 visitors participate in boating and approximately 138,000 visitors participate in fishing each year. In addition, approximately 5,000 people camp at the Coyote Lake Campground constructed and operated by the County on District property. The combined total of these activities accounts for roughly 7% of the total County visitation. In addition to reservoir use, the multi-jurisdictional regional trails system that follows creek corridors partially controlled by the District supports millions of recreational visits annually. The public values the seamless access and recreational use of the combined system of County and District lands, reservoirs, creeks, and visitor-serving facilities.

Our two organizations successfully collaborate on numerous projects, including, but not limited to, the Vessel Inspection Program, remediation of mercury at Almaden Quicksilver County Park, flood protection, creek clean-up events, the Habitat Conservation Plan, and developing an inter-connected system of trails in cooperation with numerous other agencies.

The partnership is formalized through a Master Reservoir Lease, by which the District allows public recreation under the management of the County; and a Master License agreement by which the County permits District access and limited use of Park property.

The existing Master Reservoir Lease was approved by the District Board and the Santa Clara County Board of Supervisors (Board of Supervisors) on September 10, 1996, for a 20-year term through 2016. The lease was amended in 2005 to update the mapped areas and amended a second time in 2009 to incorporate a small parcel next to Vasona Reservoir into the existing agreement. A two-year extension of the current lease was jointly approved in August 2016.

On May 17, 2017, the District Board and the Board of Supervisors agreed to appoint ad-hoc subcommittees to jointly meet to resolve any outstanding and unresolved issues relative to the renewal of the agreements. The two ad-hoc subcommittees did not meet and in late 2017 both the District and the County ad-hoc subcommittee members asked for both agencies' staff to continue to work toward resolution. At the CEO's direction, in February 2018, the Chiefs from the Water Utility, Watersheds and External Affairs took over negotiations on behalf of the District.

In July of 2018, both District and County staff reached consensus on all areas of the proposed agreements.

Overview of Proposed Agreements

District and County Parks staff have come to agreement on the following documents:

- A Joint Resolution (Attachment 1) of shared principles that is intended to frame the District-County land use relationship for existing and future agreements and interactions relating to County parkland and District properties. These Shared Principles shall be re-evaluated every five years so that the District and County may determine whether to update or revise the Shared Principles which shall only be done by approval of both the County's Board of Supervisors and

the District's Board of Directors.

- A Memorandum of Agreement (Attachment 2) that is to set forth the terms and conditions, scope of work and responsibilities of the County and District associated with their collaboration in seeking mutually agreed upon opportunities to implement the Shared Principles.

- A Master License Agreement (Attachment 3) which provides a process for expedited review and approval of District and County Parks requests for temporary access permits on District/County Parks properties

- A Master Partnership Agreement (Attachment 4), which will replace the Master Reservoir Lease and provide a new framework for how the District and County Parks collaborate on recreational uses of District property.

Notable Changes In New Agreements

The Master Partnership Agreement succeeds and replaces the Master Reservoir Lease. The Master Partnership Agreement provides a renewed commitment to partnership in the operation of District properties for public recreational use and makes the following key changes from the earlier Master Reservoir Lease:

- Incorporation of the new Shared Principles being considered by the Board today (Recitals; Appendix C);
- More detailed provisions regarding the District's ability to modify or suspend permitted recreational uses (par. 2(c)-(d));
- Upon termination of expiration of the agreement, the County shall not be required to remove County improvements from District property (Par. 2(f));
- Specified limitations regarding fish stocking (par. 4(e));
- The District is now responsible for repairing and replacing County Improvements damaged or removed by the District (e.g., as a result of District construction projects) (par. 4(h); (5(g));
- Specification that County has no obligation to undertake actions to address conditions resulting from low water levels (par. 4(o));
- Requirement that the District provide the County with annual notice of the scheduled operational levels for each reservoir on District Property for the remainder of the calendar year (par. 5(d));
- Requirement that the District engage the County early in conceptual and subsequent planning and design for projects (par. 5(e), 5(h));
- Working Groups and Process for Developing Written Protocols. To address issues that are current challenges for District and County Parks staff (e.g. water quality, fish stocking, fishing events) as well as for future issues that may arise, a process for working groups to establish written protocols is outlined so that these issues may be consistently addressed (par. 6);
- Requirement that the County comply with the District's mussel prevention program and the

Bay Area Consortium for zebra and quagga mussels coordinated prevention plan where boating and fish stocking are allowed (par. 7(c)(3));

- Specification that the parties will share the cost of repairs, maintenance, or improvements where they agree that items significantly relate to both the County's Permitted Recreational Uses and the District's uses of the Premises (par 8(b)(1));
- Specification that "where mutually agreed upon in writing by the Parties", the District may fund repairs, maintenance, or improvements to District Property for recreational uses (par. 8(b)(2));
- Specification that for Permitted Recreational Uses, the parties will look for opportunities to partner on projects of mutual interest (par. 11(a)); and
- Modification of the indemnification provisions to shift additional risk to the District.

FINANCIAL IMPACT:
There is no financial impact associated with the consideration of this item, however significant costs could be incurred by the District depending on the County of Santa Clara exercising certain terms within the agreement, the volume and nature of future claims or suits for damages by third-parties, and the scope of future District projects creating a need to repair or replace County improvements on District property.

CEQA:
Approval of the Joint Resolution, Memorandum of Agreement, and Master License Agreement is not subject to CEQA review pursuant to Section 15061(b)(3) of the CEQA Guidelines which states that "CEQA applies only to projects which have the potential for causing a significant effect on the environment."

A negative declaration (ND) was adopted by the District on September 10, 1996 before the 1996 Master Reservoir Lease was approved. Staff has determined that execution and implementation of the Master Partnership Agreement would not result in any new significant impact or a substantial increase in severity of a previously identified significant impact as disclosed in the ND. Thus, no further environmental review would be required and the District may rely on the adopted ND to approve the Master Partnership Agreement.

ATTACHMENTS:
Attachment 1: Joint Resolution
Attachment 2: Memorandum of Agreement
Attachment 3: Master License Agreement
Attachment 4: Master Partnership Agreement

UNCLASSIFIED MANAGER:
Rick Callender, 408-630-2017

Appendices available at: https://scvwd.legistar.com